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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RIETER INGOLSTADT SPINNEREIMASCHINENBAU AG.

Appeal 2009-003202
Application 10/726267
Technology Center 3600

Decided: September 8, 2009

Before JAMESON LEE, RICHARD TORCZON, and
SALLY C. MEDLEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, RIETER INGOLSTADT SPINNEREIMASCHINENBAU AG. (RIS), under

35 U.S.C. § 134(a) from a final rejection of claims 23, 24, 27-29, 33-35, and 37-46. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

References Relied on by the Examiner

Burke et al. (Burke)	5,507,226	Apr. 16, 1996
Labesky	5,833,776	Nov. 10, 1998

The Rejections on Appeal

The Examiner rejected claims 23, 24, 27-29, 33-35, and 37-46 under 35 U.S.C. § 103(a) as unpatentable over Burke and Labesky.

The Invention

The invention relates to a friction ring for a friction roll that drives a spool of a textile machine where the friction ring may be easily removed and replaced. (Spec. 1:15-2:11.)

Independent claim 23 is reproduced below (App. Br. 20, Claims App'x):

23. An apparatus for friction driving a spool on a textile machine, said apparatus comprising:

a friction roll having at least one rotatable roll body disposed thereon; and

a friction ring carried on said rotatable roll body, said friction ring configured as a belt with two open ends bound together by a fastening apparatus.

B. ISSUES

1. Has RIS shown that the Examiner erred in determining that one with ordinary skill in the art would have recognized from the combined

teachings of Burke and Labesky that a friction ring may be configured as a belt with two open ends bound together by a fastening apparatus?

2. Has RIS shown that the Examiner erred in determining that each of dependent claims 27-29, 33-35, and 38-40 would have been obvious in view of the combined teachings of Burke and Labesky?

C. FINDINGS OF FACT

Burke

1. Burke discloses a device for transporting webs of material in a rotary printing press. (Burke 1:10-14.)
2. The web transport device includes a driven transport roller 10 in contact with an engageable nip roller 12. (*Id.* at 3:36-39).
3. Nip roller 12 includes an outer removable nip sleeve 14 having a hollow tubular construction. (*Id.* at 3:58-61.)
4. The nip sleeve is formed of an inner layer 44, an intermediate layer 38, and an outer layer 30. (*Id.* at Fig. 3.)
5. Inner layer 44 is described as a hollow “elastically expandable” layer (*Id.* at 4:32) that is configured to “resiliently expand” in response to air pressure applied against an inner surface of the layer 44 so that nip sleeve 14 may be removed from nip roller 12 (*Id.* at 6:8-16).
6. The benefit provided by the nip sleeve is that it may be easily replaced when worn or damaged without having to replace the entire nip roller. (*Id.* at 2:48-52.)
7. As is disclosed in Burke, a nip sleeve that is removed without disassembling the nip roller is preferable to minimize machine down-time. (*Id.* at 5:60-67.)

8. Burke discloses that nip sleeve 14 engages nip roller 12 by an “interference fit.” (*Id.* at 4:49-50.)

9. The interference fit between the inner layer of the nip sleeve and the outer surface of the nip roller causes the sleeve to firmly grip the roller. (*Id.* at 4:50-61.)

Labesky

10. Labesky teaches that a strip of material may be formed in a ring shape by “releasably joining” the two free ends of the material. (Labesky 2:17-23.)

11. Labesky’s Figure 20 is reproduced below:

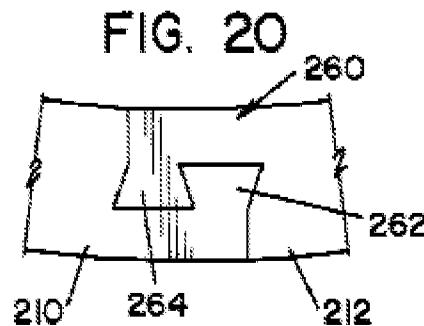


Figure 20 above shows an embodiment of Labesky’s connector elements.

12. As shown in Figure 20, an interlocking connection 260 made by connecting hooks 210 and 212 that have end elements 262 and 264 with slanted shapes. (*Id.* at 8:46-58.)

D. PRINCIPLES OF LAW

A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985).

It is well established that unclaimed features should not be read into the claims from the specification. *Superguide Corp. v. DirecTV Enterprises, Inc.* 358 F.3d 870, 875 (Fed Cir. 2004).

An obviousness determination is not based on a physical or bodily incorporation of the elements of one prior art into another, but on the teachings that one with ordinary skill in the art would appreciate from the totality of the references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

A reference is analogous art if it is either in the field of the applicant's endeavor or is reasonably pertinent to the particular problem with which the inventor was concerned. *In re Kahn*, 441 F.3d 977, 987 (Fed. Cir. 2006). The problem examined is not limited to the specific problem solved by the invention but can be the general problem that confronted the inventor before the invention was made. *Id.* at 988.

E. ANALYSIS

The Examiner rejected claims 23, 24, 27-29, 33-35, and 37-46 as unpatentable over Burke and Labesky. RIS argues dependent claims 24, 37, and 41-46 collectively with independent claim 23. Each of dependent claims 27-29, 33-35, and 38-40 is separately argued. We focus on the claim limitations that are in dispute.

Claims 23, 24, 37, and 41-46

The dispute centers on claim 23's requirement of a "friction ring configured as a belt with two open ends bound together by a fastening apparatus." The Examiner determined that Burke discloses all the limitations of claim 23 with the exception of that limitation. To remedy the deficiency, the Examiner turned to Labesky. The Examiner found that

“Labesky teaches a ring 10 with ring fastening means in general having two open ends bound together by a fastening apparatus 24, 26.” (Ans. 3:19-20.)

The Examiner reasoned that (Ans. 4:1-4):

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the friction ring of Burke to include a fastening means general[ly] having two open ends bound together by a fastening apparatus as suggested by Labesky, to more easily remove the friction ring of Burke.

RIS contends that the combination of Burke and Labesky does not satisfy the requirement of a belt with two open ends that are bound together by a fastening apparatus. RIS first argues that neither of those references discloses a “belt.” According to RIS, a belt is necessarily a flexible element and neither Burke nor Labesky shows a flexible element. (Reply Br. pp. 2-5.) In particular, RIS submits that Burke’s nip sleeve 14, which the Examiner found as the required belt, is “a rigid, cylindrical sleeve [that] is not a belt that can be flexibly wrapped around a nip roller...” (App. Br. 9:14-16.) Thus, RIS alleges that Burke’s nip sleeve is not a belt because it is not flexible.

RIS’ specification does not define the term “belt” as having any special meaning. Both the Examiner and RIS have pointed to the ordinary meaning of “belt” as being a structure that is made of a flexible material. (See each of the Collins English Dictionary definition of “belt” mailed by the Examiner on October 11, 2007 and page 4 of RIS’ Reply Brief.) There is, however, no particular degree or type of flexibility that is intrinsic to that term or that is required by RIS’ claims. Burke discloses that nip sleeve 14 has a hollow tubular construction and engages nip roller 12. (Burke 3:58-61.) The nip sleeve is formed of an inner layer 44, an intermediate layer 38,

and an outer layer 30. (*Id.* at Fig. 3.) Inner layer 44 is described as a hollow “elastically expandable” layer (*Id.* at 4:32) that is configured to “resiliently expand” in response to air pressure applied against an inner surface of the layer 44 so that nip sleeve 14 may be removed from nip roller 12 (*Id.* at 6:8-16). A structure that is elastically expandable and resiliently expands is made of a flexible material.

RIS contends that its specification describes only a belt that has the flexibility to be wrapped and unwrapped around a nip roller and thus limits the claimed belt to a structure that has the same flexibility. (Reply Br. 3:2-4; 5:3-7.) That contention is misplaced. There is no requirement in patent law that an applicant must specifically describe in its specification every single embodiment of its invention that falls within the scope of a claim. That an embodiment of a belt described in RIS’ specification has one type and degree of flexibility does not preclude the term “belt” from covering other structures having different types and degrees of flexibility. It is also well established that unclaimed features should not be read into the claims from the specification. *Superguide Corp.*, 358 F.3d at 875.

In Burke, the inner layer 44 of nip sleeve 14 is disclosed as an elastically expandable structure that is resiliently expanded to allow the nip sleeve to be removed from nip roller 12. Thus, the nip sleeve is sufficiently flexible for its intended purpose of being removed from the nip roller. In light of that disclosure, we reject RIS’ argument that Burke’s nip sleeve is not flexible. We therefore reject RIS’ argument that the nip sleeve is not a belt.

RIS also argues that one with ordinary skill in the art would not have modified Burke’s nip sleeve based on the teachings of Labesky because the

modification would render Burke unsatisfactory for its intended purpose. In particular, RIS contends that the intended purpose of Burke's invention is to make an outer surface of its nip sleeve that is continuous with no gaps or seams. (App. Br. 10:12-18.) According to RIS, any modification of Burke's nip sleeve based on Labesky's teachings would result in a gap or seam in the nip sleeve contrary to the alleged intended purpose of Burke. (*Id.* at 11:1-8.)

We reject RIS' argument. The purpose of Burke's nip sleeve is to form a removable outer covering for a nip roller that engages and transports a sheet of web material. (Burke 3:32-44.) The benefit provided by the nip sleeve is that it may be easily replaced when worn or damaged without having to replace the entire nip roller. (*Id.* at 2:48-52.) While Burke desires that its nip sleeves be gapless or seamless, that is not the intended purpose of the nip sleeve but is rather simply a structural feature of Burke's invention. A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp.*, 755 F.2d at 907. There is no requirement that any structure disclosed by a reference must be preserved and is not modifiable by one with ordinary skill in the art. The obviousness determination is based on what the prior art would have suggested to one with ordinary skill in the art including variation on what is disclosed by the prior art.

Here, the combined teachings of Burke and Labesky were applied in rejecting RIS' claims. Burke discloses a nip sleeve having a ring shape. While Burke discloses that its nip sleeve is seamless, the reference does not disclose that the nip sleeve would be incapable of operating to transport a sheet of web material if formed with a seam. Labesky discloses a spring

formed into a ring shape by joining interlocking elements that form a seam in the ring. The reference is silent as to any impact that a seam would have when incorporated in a device for transporting a sheet of web material. RIS does not direct us to any evidence that forming Burke's nip sleeve with a gap or seam, such as that of Labesky, would render the sleeve unsatisfactory for the purpose of transporting web material.

RIS further argues that modifying Burke based on the teachings of Labesky would contradict the principle of operation of Burke. (App. Br. 11:9-10.)

Burke discloses a ring shaped nip sleeve that is designed to be removed from a nip roller. As is disclosed in Burke, one means to effect the removal of the nip sleeve is by resiliently expanding the sleeve so that it may be slid off the nip roller. (Burke 6:8-16.) Labesky teaches that a strip of material may be formed into a ring shaped spring by "releasably joining" the two free ends of the material. (Labesky 2:17-23.) One with ordinary skill in the art would have understood that the practice taught in Labesky of releasably joining ends of material to form a ring shape is not limited solely to springs. Indeed, a person of ordinary skill in the art is also a person of ordinary creativity, not an automaton. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

Here, one with ordinary skill and creativity would have recognized that implementing a releasable connection, such as that of Labesky, in Burke's ring shaped nip sleeve would have enabled the release of the ring shape and allowed removal of the nip sleeve from the nip roller. The releasable connection would thus provide an additional mechanism for allowing removal of a nip sleeve from a nip roller. RIS does not explain

why simply providing an alternative way to remove the nip sleeve from the roller would prevent removal of the sleeve in the manner already disclosed in Burke. We reject RIS' argument that combining the teachings of Labesky with Burke contradicts Burke's principle of operation.

RIS also argues that the Examiner did not set forth a reasonable expectation of success in modifying Burke based on the teachings of Labesky. (App. Br. 12:9-11.) In supporting that argument, RIS points to the frusto-conical shape of Labesky's spring and other characteristics of that spring as rendering it incapable of use with Burke's printing press. (*Id.* at 12:13-13:5.)

RIS' argument is misplaced. The Examiner did not propose modifying any component of Burke to incorporate the frusto-conical shape of Labesky's spring or to use that spring with Burke's printing press. Rather, the Examiner simply relied on Labesky as teaching that two ends of a strip of material may be releasably connected to form a ring shape, such as the ring shape already disclosed in Burke for its nip sleeve. There is no requirement in an obviousness analysis that each and every teaching of one reference must be physically transferred and incorporated into another. RIS does not explain why combining the teachings of Burke and Labesky requires that Burke's nip sleeve adopt the frustonical shape of Labesky's spring or that the spring is used directly with Burke's printing press.

Moreover, an obviousness determination is not based on a physical or bodily incorporation of the elements of one prior art into another, but on the teachings that one with ordinary skill in the art would appreciate from the totality of the references. *In re Keller*, 642 F.2d at 425. The Examiner reasonably determined that one of ordinary skill in the art would have

expected the combined teachings of Burke and Labesky to yield a removable nip sleeve. RIS has not shown error in that determination.

Lastly, RIS asserts that Burke and Labesky are non-analogous art and thus are improperly applied in rejecting its claims. (App. Br. 13:7-15; Reply Br. 8:1-19.) We focus first on RIS' non-analogous art argument directed to Labesky. According to RIS, Labesky is not available as prior art because "Labesky's Bellville springs are constructed from hardened steel, frustoconically-shaped coils – which could not be flexibly wrapped about a roll like Appellants' claimed belt." (Reply Br. 8:16-18.)

RIS' argument is misdirected. The analogous art inquiry does not require that a component of a reference be similarly structured to, or function in the same manner as, a claim feature. Rather, a reference is analogous art if it is either in the field of the applicant's endeavor or is reasonably pertinent to the particular problem with which the inventor was concerned. *In re Kahn*, 441 F.3d at 987. The problem examined need not be the specific problem solved by the invention but can be the general problem that confronted the inventor before the invention was made. *Id.* at 988.

In this case, the general problem that confronted the inventors of the present application was in forming a friction ring that is releasable from its ring shape so that it may be easily removed from a friction roll. Labesky discloses that a ring shaped structure is constructed by releasably joining the ends of a strip of material. Thus, Labesky teaches a structure that is configured to be released from a ring shape. A person of ordinary skill in the art would have viewed that teaching as reasonably pertinent to the

general problem addressed in the present application. We reject RIS' argument that Labesky is non-analogous art.

With regard to Burke, RIS states that (Reply Br. 9:10-15):

Burke et al. provides a seamless sleeve. Unlike Appellants' claimed belt having two ends that are fastened together (creating a seam), Burke et al.'s sleeve can only be removed by disassembling the machine. In fact, Burke et al. sets forth a substantial amount of description for how the printing press must be disassembled in order to replace the seamless sleeve. See Col. 5, line 12 to Col. 6, lines 30. For that reason, Burke et al. does not provide a solution to the problem that is solved by Appellant's belt as claimed.

Thus, RIS contends that Burke is non-analogous art because it does not itself provide a solution to the problem that was solved by RIS' invention. That contention is also misdirected. It is not necessary that a reference solve the problem confronted by the inventors to be considered analogous art. All that is required is that the reference be reasonably pertinent to the problem. Here, as noted above, the general problem that confronted the inventors of the present application was in forming an easily replaceable friction ring for a friction roll. Burke discloses a nip sleeve that is removed from a nip roller and replaced. (Burke 2:48-52.) Contrary to RIS' assertions, the configuration of Burke's nip sleeve and nip roller allows removal of the nip sleeve without disassembly of components of the machine. Indeed, Burke explicitly states that removing the nip sleeve without requiring disassembly of the nip roller is preferable to minimize machine down-time. (*Id.* at 5:60-67.) A person of ordinary skill in the art would have recognized that Burke's disclosure of an easily replaceable nip sleeve is reasonably pertinent to the problem addressed by RIS' invention in

forming an easily replaceable friction ring. We reject RIS' argument that Burke is non-analogous art.

For the foregoing reasons, we sustain the rejection of claims 23, 24, 37, and 41-46 as unpatentable over Burke and Labesky.

Claims 27 and 28

Claims 27 and 28 are reproduced below (App. Br. 20, Claims App'x.)

27. An apparatus as in claim 23, wherein said friction ring is further affixable to at least one of said roll body or said friction roll by at least one auxiliary fastener.

28. An apparatus as in claim 27, wherein said fastening apparatus and said auxiliary fastener are equally distributed over the circumference of at least one said roll body or said friction roll.

In rejecting claims 27 and 28, the Examiner determined that "Burke as modified by Labesky teaches [that] the fastening apparatus also affixes the friction ring to the roll body to secure the friction ring to the roll body by an auxiliary fastener that is equally distributed over the circumference of the roll body 12 (Burke, Col. 4 lines 49-61)." (Ans. 4:5-8.) The Examiner further explained that "Burke discloses the ring as a friction fit and the internal layer is an auxiliary fastener that is equally distributed over the circumference of the roll body 12." (Ans. 9:8-9.)

Burke discloses that nip sleeve 14 engages nip roller 12 by an "interference fit." (Burke 4:49-50.) In particular, Burke describes that an interference fit between the inner layer of the nip sleeve and the outer surface of the nip roller causes the sleeve to firmly grip the roller. (*Id.* at 4:50-61.) Given those teachings, the Examiner reasoned that when Labesky's connectors are implemented on Burke's nip sleeve, the sleeve's

inner layer forms a fastener for attaching the nip sleeve to the roller that is auxiliary to the fastening apparatus formed by the connectors and is equally distributed over the roller body.

The Examiner's explanation is reasonable. No particular type of fastener is specified by the claims. The claims also do not exclude a fastener from being composed of portions of the friction ring. That RIS itself discloses only separate fasteners does not mean the "separate" limitation should be read into the claims. RIS simply disagrees with the Examiner and contends that the teachings of Burke do not satisfy claims 27 and 28. (App. Br. 14: ll. 9-10 and 21-22.) RIS does not specifically address the Examiner's reasoning, much less explain how it is incorrect. RIS has not shown how the Examiner erred in determining that the combined teachings of Burke and Labesky disclose a fastening apparatus and an auxiliary fastener as required by claims 27 and 28.

Claim 29

Claim 29 is reproduced below (Claims App'x 21:1-3):

29. An apparatus as in claim 23, wherein said fastening apparatus comprises two connectors, whereby one of said connectors is secured to each of said two open ends of said friction ring.

The Examiner found that Labesky teaches connectors 24 and 26 that are secured to each open end of its spring. Applying that teaching to Burke, the Examiner determined that the connectors of claim 29 were satisfied. (Ans. 4:9-12.)

RIS argues that Labesky's connectors are integral with its spring and thus are not "secured" to each open end as required by claim 29. (App. Br. 8-11.)

RIS' specification does not define the term "secured" to have any particular meaning. The ordinary meaning of "secure" is "to make tight or firm." *Webster's II New Riverside University Dictionary* 1055 (1988). Labesky's connectors 24 and 26 are formed at the ends of its spring. Those connectors operate to fasten the ends of the spring together so as to maintain the spring in a ring shape. One with ordinary skill in the art would have reasonably regarded those connectors as being tight or firm relative to the ends of the spring. RIS does not explain why connectors that are formed in the ends of a structure are excluded from being considered "secured" to those ends. We are not persuaded that the Examiner erred in determining that Labesky teaches connectors that are secured as required by claim 29.

Claims 33-35

Claims 33-35 are reproduced below (App. Br. 21, Claims App'x):

33. An apparatus as in claim 29, wherein each of said connectors include at least one hook that is engagable with a corresponding hook on said other connector.

34. An apparatus as in claim 33, wherein said hooks have a slanted shape.

35. An apparatus as in claim 33, wherein said hooks are subjected to a load in a locking direction relative to a direction of drive of said friction ring when said connectors have secured a friction ring to said roll body.

The Examiner determined that the embodiments shown in Labesky's Figures 16-23 show connectors that satisfy the requirements added by claims 33-35, and in particular, hooks having a slanted shape and subjected to a load in the locking direction. (Ans. 10:1-10.)

Labesky's Figure 20 is reproduced below:

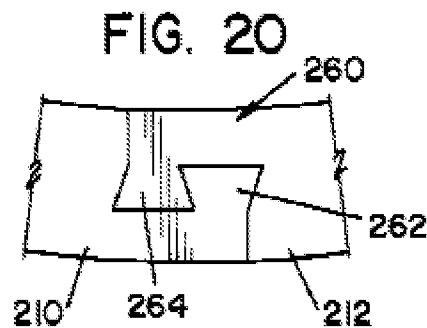


Figure 20 above shows an embodiment of Labesky's connector elements.

RIS disputes that Labesky discloses hooks as required by claims 33-35 does but does not explain why the connectors shown, for instance, in Figure 20 are not reasonably viewed as hooks that have a slanted shape and which are subjected to the required load. Shown in the illustration is an interlocking connection 260 made by connecting hooks 210 and 212 that have end elements 262 and 264 with slanted shapes. (Labesky 8:46-58.) We are not persuaded of any error in the Examiner's determination that claims 33-35 are satisfied by the prior art.

Claims 38-40

Claim 38-40 are reproduced below (App. Br. 22, Claims App'x):

38. An apparatus as in claim 37 wherein said friction ring exhibits a cross-section that diminishes from a center portion of said friction ring to edges of said friction ring when no tensile force is acting on said friction ring.

39. An apparatus as in claim 38, wherein said cross-section of said friction ring is about constant when subject to said tensile force equal to that of installation on said roll body.

40. An apparatus as in claim 37, wherein said friction ring exhibits a width that diminishes with increasing distance from said ends of said friction ring when no tensile force is acting on said friction ring.

The Examiner stated that the requirements of each one of claims 38-40 were satisfied by the combined teachings of Burke and Labesky because they are all “properties that are inherent to an elastic material that is ring shaped and *subject to a tensile force.*” (Ans. 5:3.) (Emphasis added).

RIS disputes that the limitations added by claims 38-40 are inherent to the structures disclosed in Burke and Labesky. (App. Br. pp. 17-19.)

Evidently, the Examiner has misconstrued the requirements of claims 38-40. Those claims require particular structural characteristics of a friction ring *when no tensile force* is acting on the ring. Yet, the Examiner’s theory of inherency is premised on the ring being subjected to a tensile force.

Claim 38 requires that, when no tensile force acts on the ring, the cross-section of the ring decreases from its center to its edges. Neither Burke nor Labesky shows or describes a ring with a cross-section that is structured in that manner. The Examiner also does not explain why either of the rings of those references inherently has a cross-section of non-uniform thickness when tensile forces do not act on the ring.

Claim 40 requires that the width of the friction ring decreases with increasing distance from the ends of the ring. Neither Burke nor Labesky shows or describes that there is any variation in the width of their respective rings. The Examiner also does not explain why either of those rings inherently has a variable width when tensile forces do not act on the ring.

We do not sustain the rejections of claims 38 and 40 as unpatentable over Burke and Labesky. Claim 39 is dependent on, and requires all the limitations of, claim 38. We also do not sustain the rejection of claim 39.

F. CONCLUSION

1. RIS has not shown that the Examiner erred in determining that one with ordinary skill in the art would have recognized from the combined teachings of Burke and Labesky that a friction ring may be configured as a belt with two open ends bound together by a fastening apparatus.

2. RIS has not shown that the Examiner erred in determining that claims 27-29 and 33-35 would have been obvious in view of the combined teachings of Burke and Labesky. RIS has shown error in the Examiner's determination that claims 38-40 would have been obvious over the teachings of those references.

G. ORDER

The rejection of claims 23, 24, 27-29, 33-35, 37 and 41-46 under 35 U.S.C. § 103(a) as unpatentable over Burke and Labesky is affirmed.

The rejection of claims 38-40 under 35 U.S.C. § 103(a) as unpatentable over Burke and Labesky is reversed.

AFFIRMED-IN-PART

APJ initials:

Appeal 2009-003202
Application 10/726,267

rvb

cc:

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